



July 29, 2022

Ms. Erin Houston
Administrator/Deputy Secretary of State for Securities
Securities Division
2250 Las Vegas Boulevard North
Suite 400
North Las Vegas, NV 89030

RE: Comments on Revised Proposed Regulations to Nevada Administrative Code Chapter 90
(LCB File Number R018-21)

Dear Erin:

As you know, the Securities Industry and Financial Markets Association (SIFMA)¹ is a national trade association which represents more than 350 large, medium and small broker-dealers, investment banks and asset managers, many of whom have a presence in Nevada.

We appreciate the opportunity to comment on your proposed amendments to Nevada Administrative Code Chapter 90 (LCB File Number R018-21). Specifically, we would like provide input on Sections 36 and 48 of the Revised Proposed Regulations.

I. Section 36, Delaying a Transaction or Disbursement When Financial Exploitation is Suspected

On September 22, 2021, the Nevada Securities Division announced a workshop to solicit comments on proposed regulations that would significantly revise portions of Chapter 90 of the Nevada Administrative Code (“NAC”). Written comments were also requested.

On October 21, 2021, SIFMA submitted comments (linked [here](#)) on Section 15 of the proposed regulations, which focused on delaying disbursements when financial exploitation is suspected. We commended the Securities Division for its efforts to protect senior and vulnerable investors but suggested that it revise its proposal to incorporate additional investor protections that have been adopted by other states in recent years.

We applaud the Division for including substantial additional senior investor protections in its revised proposed regulations. Most notably, the revised regulations allow Broker-Dealers (BD) and Investment Advisers (IAs) to delay disbursements and transactions when financial exploitation is suspected. They also

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

build in a flexible extension of the hold when necessary, align the various time periods, and enable BDs and IAs, upon notifying the relevant agencies, to continue their internal reviews as necessary and provide status updates upon request. We believe these are valuable changes which substantially enhance investor protection.

We would, however, encourage you to reconsider our suggestion to expand the third-party contact provisions when financial exploitation of a senior or vulnerable adult is suspected. Currently, under contract law, federal law and SRO rules, firm personnel can reach out to persons designated by the client to help protect client assets and respond to possible financial exploitation. Difficulties, however, arise when no third party has been designated or when the designated person is the person suspected of the financial exploitation. Seventeen states² have addressed this by permitting BDs and IAs to reach out to third parties “reasonably associated” with the senior or vulnerable adult when financial exploitation is suspected. We would encourage you to follow their lead.

II. Section 48: Amendments to NAC 90.327, Unethical or Dishonest Practice Cross-Reference

We also wanted to flag something in the latest Revised Proposed Regulations that has caused some questions and concern. Sections 5-8 focus exclusively on IAs and IARs. The Legislative Counsel’s Digest describes these provisions as follows:

Section 5 of this regulation establishes the fiduciary duty of investment advisers, representatives of investment advisers and federal covered advisers and specifies conduct which violates the fiduciary duty.

[S]ection 6 of this regulation expands the practices that constitute unethical or dishonest practices for investment advisers, representatives of investment advisers and federal covered advisers as those practices relate to advertisements.

Section 7 of this regulation provides that it is unlawful and deemed to be a fraudulent, deceptive and manipulative act, practice and course of business for an investment adviser to have custody of client funds or securities unless certain criteria are met by the investment adviser.

Section 8 of this regulation makes it an unethical or dishonest practice for an investment adviser to enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds of the client, or a portion of any such funds, unless certain criteria are met.

We have no comment on the substance of these sections.

Section 48, however, “expands the practices that constitute unethical or dishonest practices” for BDs, sales representatives, IAs, representatives of an IA and transfer agents. Proposed revisions to this section make it an unethical or dishonest practice to engage in any act or practice enumerated in NAC 90.328 “or prohibited by sections 5 to 8, inclusive, of this regulation.”

² These states are Alabama, Arizona, Arkansas, Colorado, Hawaii, Kentucky, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, Texas, Utah and West Virginia.

We respectfully question whether referencing Sections 5 to 8 is necessary in Section 48. Cross-referencing these sections in this manner does not change the requirements imposed on IAs and IARs. It does, however, unnecessarily raise questions as to whether these sections now apply more broadly to BDs and their representatives.

We do not believe this is the intention or the obvious reading of this language. It, however, is one reading of the language and has therefore resulted in requests for clarification.

We would suggest dropping the reference to Sections 5-8 in Sec. 48. Its inclusion provides little additional benefit, and its exclusion eliminates existing confusion. If that is not possible, we would suggest modifying the reference to Sections 5-8 in Sec. 48 as follows:

- (a) Engaging in any act or practice enumerated in NAC 90.328 or, for investment advisers and representatives of investment advisers, prohibited by sections 5 to 8, inclusive, of this regulation.

We appreciate your willingness to consider our suggestions. Please do not hesitate to contact me at 202-962-7411 with any questions.

Sincerely,



Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA